

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (BOSTON)**

CHARLES BROWN, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

vs.

BIOMED INC., WILLIAM RASTETTER,
and JAMES MULLEN,

Defendants.

1:05-cv-10400 (RCL)

CARY GRILL, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

vs.

BIOMED INC., WILLIAM RASTETTER
and JAMES MULLEN,

Defendants.

1:05-cv-10453 (RCL)

ROCHELLE LOBEL, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

vs.

BIOMED INC., WILLIAM RASTETTER
and JAMES MULLEN,

Defendants.

1:05-cv-10801 (RCL)

**MOTION BY THE BIOMED INSTITUTIONAL INVESTOR GROUP TO SUBMIT
SUPPLEMENTAL AUTHORITY RELEVANT TO ITS MOTION FOR
CONSOLIDATION, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF
LEAD PLAINTIFF'S SELECTION OF CO-LEAD AND LIAISON COUNSEL**

The New Jersey Carpenters Pension and Annuity Funds, Folksam Asset Management, Third Millennium Trading LLP (“Third Millenium”), the Deerfield Beach Non-Uniformed Municipal Employees Retirement Plan, the Plumbers and Pipefitters Local No. 520 Pension Fund and Horatio Capital, LLC (“Horatio Capital”) (collectively, the “Biogen Institutional Investor Group”) respectfully move this Court for leave to submit supplemental authority. As grounds therefore, the Biogen Institutional Investor Group states that it seeks to bring to the Court’s attention an important development which is relevant to this Court’s consideration of its Motion For Consolidation, Appointment As Lead Plaintiff And Approval Of Lead Plaintiff’s Selection Of Co-Lead And Liaison Counsel now pending in the above-entitled cases.

On June 6, 2005, the Honorable Joseph L. Tauro appointed Third Millenium and Horatio Capital, and four other movants,¹ as Lead Plaintiff and Milberg Weiss Bershad & Schulman LLP and Entwistle & Cappucci LLP as Lead Counsel in the *Elan* securities class actions² (“the *Elan* Order”). A copy of the *Elan* order is attached hereto as Exhibit A. The *Elan* Order is relevant to the motion before this Court because Third Millenium and Horatio Capital are also seeking appointment as Lead Plaintiff in this matter as members of the Biogen Institutional Investor Group. The appointment of Third Millenium and Horatio Capital in the *Elan* litigation supports their appointment in this matter and undermines the attacks leveled against them by the London Group. As discussed in the Biogen Institutional Investor Group’s Reply Memorandum (at 18-

¹ These other movants were MN Services, Activest Investmentgesellschaft mbH, Electronic Trading Group L.L.C. and Donald S. Frank.

² The *Elan* actions pending in this District are captioned: *Williams v. Elan Corp., PLC.*, No. 05-CV-10413 (D. Mass. filed Mar. 4, 2005) (JLT) and *Sidney D. Feldman Family Trust v. Elan Corp., PLC.*, No. 05-CV-10481 (D. Mass. filed Mar. 14, 2005) (JLT).

19), significant efficiencies and synergies could be realized from having the same leadership structure in each set of actions.

WHEREFORE, the Biogen Institutional Investor Group moves this Court for leave to submit the *Elan* Order as Supplemental Authority.

DATED: June 9, 2005

Respectfully submitted,

MOULTON & GANS, P.C.

By: /s/ Nancy Freeman Gans
Nancy Freeman Gans, BBO #184540
33 Broad Street, Suite 1100
Boston, MA 02109
Telephone: (617) 369-7979

Proposed Liaison Counsel

ENTWISTLE & CAPPUCCI LLP

Vincent R. Cappucci
Stephen D. Oestreich
Robert N. Cappucci
299 Park Avenue
New York, NY 10171
(212) 894-7200

**MILBERG WEISS BERSHAD
& SCHULMAN LLP**

Steven G. Schulman
Anita B. Kartalopoulos
Peter E. Seidman
Andrei V. Rado
One Pennsylvania Plaza
New York, NY 10119
(212) 594-5300

Proposed Co-Lead Counsel

LOCAL RULE 7.1 CERTIFICATE

I, Nancy Freeman Gans, Esquire, hereby certify that on June 8-9, 2005, I spoke with Theodore M. Hess-Mahan, Esquire, of Shapiro, Haber & Urmy, LLP, counsel for the London Pensions Fund Authority and Elevator Industry Pension Fund, regarding the above motion. Mr. Hess-Mahan stated the London Pensions Fund Authority and Elevator Industry Pension Fund intend to file a response. We have conferred in good faith and been unable to resolve or narrow the issue. I also certify that on June 9, 2005, I notified Matthew J. Matule, Esquire, counsel for Defendants, of the submission of this Motion.

/s/ Nancy Freeman Gans
Nancy Freeman Gans

CERTIFICATE OF SERVICE

I, Nancy Freeman Gans, hereby certify that a true copy of the above document was served upon the attorney of record for each party.

/s/ Nancy Freeman Gans
Nancy Freeman Gans

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WENDELL WILLIAMS, Individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

ELAN CORPORATION, PLC., G. KELLY
MARTIN, LARS ECKMAN and SHANE
COOKE,

Defendants.

Case No. 05-CV-10413 (JLT)

CLASS ACTION

SIDNEY D. FELDMAN FAMILY TRUST,
Individually and on behalf of all others similarly
situated,

Plaintiff,

vs.

ELAN CORPORATION, PLC., G. KELLY
MARTIN, LARS ECKMAN and SHANE
COOKE,

Defendants.

Case No. 05-CV-10481 (JLT)

CLASS ACTION

**[REDACTED] ORDER CONSOLIDATING ACTIONS, APPOINTING LEAD
PLAINTIFF AND APPROVING LEAD PLAINTIFF'S SELECTION
OF LEAD COUNSEL**

Upon consideration of the motions and supporting papers for consolidation, appointment
of lead plaintiff and lead counsel in the above-captioned action and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**;

2. The above-captioned actions are **CONSOLIDATED** pursuant to Fed. R. Civ. P. 42(a);

3. MN Services, Activest Investmentgesellschaft mbH, Electronic Trading Group L.L.C., Third Millenium Trading, LLP, Horatio Capital LLC and Donald S. Frank are hereby **APPOINTED** to serve as Lead Plaintiff(s) in the consolidated action, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995.

4. The law firms of Milberg Weiss Bershad & Schulman LLP and Entwistle & Cappucci LLP are hereby **APPOINTED** to serve as Lead Counsel for the Class, and Moulton & Gans P.C. is appointed as Liaison Counsel, pursuant to Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), as amended by Section 101(a) of the Private Securities Litigation Reform Act of 1995, in the above-captioned action.

SO ORDERED.

DATED: 6/6, 2005


UNITED STATES DISTRICT JUDGE